



July 30, 1999

Ms. Sue Lee
Henslee, Fowler, Hepworth & Schwartz
800 Frost Bank Plaza
816 N. Congress Avenue
Austin, Texas 78701-2443

OR99-2146

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126316.

The Region III Education Service Center (the “service center”), which you represent, received a request for the following information:

any and all documents reflecting applications for employment by Dr. Nolan Kinsey, including but not limited to transmittal letters or other correspondence, applications, reference letters, resumes and any other materials sent in application for this position. Dr. Kinsey applied for the position at [sic] of Superintendent with your school district in August, 1998.

You state that some of the requested records have already been disclosed. You contend that portion of the remaining responsive records are excepted from disclosure under sections 552.101, 552.102(b), and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the documents at issue.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common-law and constitutional rights to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.101 also encompasses the constitutional right to privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

The information at issue is not the type of information considered to be highly intimate and embarrassing. *See* Open Records Decision 455 455 (1987). We note also that the common-law and constitutional rights to privacy lapse upon the death of the subject. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). For these reasons, we conclude that the information at issue is not excepted from disclosure under section 552.101.

The submitted records include Dr. Kinsey's transcripts. You contend that portions of the transcripts are excepted from disclosure under section 552.102(b). Section 552.102(b) of the excepts from disclosure a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, with the exception of the degree

obtained and the curriculum. Thus, prior to releasing Dr. Kinsey's transcripts, you must redact from the transcripts all information other than his name, the degree obtained, and the courses taken. Open Records Decision No. 526 at 2-3 (1989).

Finally, you contend that some of the information in the submitted records is excepted from disclosure under section 552.117 Code. Section 552.117 excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of officials or employees of a governmental body who elect under section 552.024 to protect such information. Section 552.024 provides that an employee of a governmental body may deny public access to such information "in the custody of the governmental body." Here, the service center is not the employing governmental body of the individuals referenced in the submitted records. Thus, the service center may not withhold information on behalf of these individuals under section 552.117. With the exception of the information protected by section 552.102(b), the submitted records must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126316

Encl. Submitted documents

cc: Ms. Jill Koester
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(w/o enclosures)